

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2490**

---

**Introduced by Assembly Member Jones**

February 19, 2010

---

An act to add Section 11658.5 to the Insurance Code, relating to workers' compensation insurance.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2490, as amended, Jones. Workers' compensation insurance: dispute resolution: arbitration clauses.

Existing law requires that a workers' compensation insurance policy or endorsement not be issued by an insurer unless the insurer files a copy of the form or endorsement with the rating organization and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or the endorsement prior to that time.

This bill would require any agreement, *other than a settlement agreement resolving a particular dispute*, between an employer and a workers' compensation insurer concerning resolution of disputes, including, but not limited to, an arbitration clause arising out of a workers' compensation policy; *or endorsement*, ~~or plan~~ be part of the form or endorsement filed with the rating organization and approved by the commissioner and contain provisions to resolve disputes *that arise in this state* in the California courts and under California law.

Failure to observe those requirements would render the dispute resolution agreement void and unenforceable.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) All California employers subject to the Workers'  
4 Compensation Law are required by law to obtain insurance for  
5 their employees.

6 (b) Workers' compensation ~~plans~~ *policies and endorsements*  
7 are highly regulated and designed primarily to protect the worker  
8 and ensure prompt payment of claims.

9 (c) The Legislature has authorized the Insurance Commissioner  
10 (commissioner) ~~and the Workers' Compensation Insurance Rating~~  
11 ~~Bureau (WCIRB)~~ to oversee the form and substance of all workers'  
12 compensation insurance ~~plans~~ *policies and endorsements*, including  
13 everything from the scope of required coverage provided to  
14 employees, to the amount employers pay insurers for premiums.

15 (d) Insurance companies providing workers' compensation  
16 ~~policies are required by law to disclose and seek preapproval from~~  
17 ~~the commissioner and WCIRB of the insurance plan being~~  
18 ~~purchased. policies and endorsements are required by law to file~~  
19 ~~the policies and endorsements with the rating organization for~~  
20 ~~transfer to the commissioner.~~

21 (e) Disputes between employers and insurance companies  
22 regarding workers' compensation plans can arise, and resolution  
23 of these disputes through litigation can be expensive, uncertain,  
24 and time consuming.

25 (f) In an effort to save time, costs, and the uncertainty of  
26 litigation, national workers' compensation carriers often place  
27 mandatory arbitration clauses into policies and, over time, these  
28 arbitration clauses have become complex and expensive, and have  
29 diminished the rights of the parties in the arbitration proceedings.

30 ~~(g) Despite the requirement that the commissioner approve the~~  
31 ~~form and substance of all workers' compensation plans, some~~  
32 ~~workers' compensation carriers issue separate or side agreements,~~  
33 ~~sometimes called Insurance Program Agreements or IPAs, that~~

1 ~~are not provided to the employer until after the policy or plan is~~  
2 ~~accepted, that require arbitration of any disputes between the~~  
3 ~~employer and the carrier concerning the approved workers'~~  
4 ~~compensation plan, and lack the approval of the commissioner.~~

5 *(g) Despite the requirement that the workers' compensation*  
6 *carrier file policies and endorsements with the rating organization*  
7 *and wait a prescribed period, some workers' compensation carriers*  
8 *issue separate or side agreements, sometimes called Insurance*  
9 *Program Agreements or IPAs, that are not provided to the*  
10 *employer until after the policy or endorsement is accepted, that*  
11 *require arbitration of any disputes between the employer and the*  
12 *carrier concerning the workers' compensation policy or*  
13 *endorsement, and that have not been filed with the rating*  
14 *organization or commissioner.*

15 ~~(h) These unapproved unfiled separate or side agreements (or~~  
16 ~~IPAs) often choose a foreign jurisdiction's law to interpret the plan~~  
17 ~~and resolve disputes, and choose a state other than California as~~  
18 ~~the location or venue to conduct arbitrations. This subjects~~  
19 ~~Californians to another state's laws and forces them to travel~~  
20 ~~outside this state to conduct dispute resolution proceedings,~~  
21 ~~resulting in significant cost burdens.~~

22 (i) California employers have successfully challenged some of  
23 these side agreements containing arbitration clauses; however, it  
24 should not be necessary to burden the California courts with these  
25 cases.

26 (j) California has a compelling state interest in ensuring that  
27 workers' compensation policies and ~~plans~~ *endorsements* are  
28 enforced under California law and not subject to interpretation by  
29 other jurisdictions, and that any dispute resolution proceedings are  
30 conducted within its borders.

31 SEC. 2. Section 11658.5 is added to the Insurance Code, to  
32 read:

33 11658.5. (a) Any agreement, *other than a settlement agreement*  
34 *resolving a particular dispute*, between an employer and a workers'  
35 compensation insurer concerning resolution of disputes, including,  
36 but not limited to, an arbitration clause arising out of a workers'  
37 compensation ~~policy, endorsement, or plan~~ *policy or endorsement*  
38 shall conform to all of the following:

- 1     (1) It shall be part of the form or endorsement filed with the  
2 rating organization and approved by the commissioner pursuant  
3 to Section 11658.
- 4     (2) It shall contain a choice of law provision that identifies  
5 California law as the law to be used to resolve any dispute *that*  
6 *arises in California*.
- 7     (3) It shall contain a forum selection provision that identifies  
8 California as the proper venue for any proceeding regarding a  
9 dispute *that arises in California*.
- 10    (b) Failure to observe the requirements of this section shall  
11 render the dispute resolution agreement void and unenforceable.